

112TH CONGRESS
2D SESSION

H. R. 3879

To provide for streamlining the process of Federal approval for construction or expansion of petroleum refineries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2012

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for streamlining the process of Federal approval for construction or expansion of petroleum refineries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—REFINERY**
4 **STREAMLINED PERMITTING**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Refinery Streamlined
7 Permitting Act of 2012”.

1 **SEC. 102. REVIEW PROCESS STREAMLINING.**

2 (a) ASSISTANCE TO STATES.—The Secretary of En-
3 ergy shall offer to States assistance to enable the States
4 to assign responsibilities delegated to the States, under
5 Federal laws relating to the construction or expansion of
6 a petroleum refining facility, in a coordinated and expedi-
7 tious manner.

8 (b) MEMORANDUM OF UNDERSTANDING.—All Fed-
9 eral agencies, and all State agencies to which responsibil-
10 ities are delegated under Federal law, responsible for ap-
11 proving a permit or other Federal authorization for the
12 construction or expansion of a petroleum refining facility
13 shall enter into a memorandum of understanding with re-
14 spect to that facility, or proposed facility, that clearly de-
15 fines all actions required to be taken for Federal permit
16 review and approval. The memorandum of understanding
17 shall identify areas where Federal and State agencies can
18 exercise discretion, and where multiple levels of review on
19 permitting decisions can be coordinated, to enable a more
20 expeditious review process.

21 (c) APPROVAL DEADLINE.—Notwithstanding any
22 other provision of law, a Federal agency, and a State
23 agency to which responsibilities are delegated under Fed-
24 eral law, shall take final action to approve or disapprove
25 an application under Federal law for the construction or
26 expansion of a petroleum refining facility not later than

1 1 year after receipt of a complete application for such ap-
2 proval.

3 (d) PRIORITY PROJECTS.—A Federal agency, and a
4 State agency to which responsibilities are delegated under
5 Federal law, shall give high priority to expediting an appli-
6 cation under Federal law for the construction or expansion
7 of a petroleum refining facility that would—

8 (1) allow for production of cleaner burning fuel;

9 (2) result in increased refining capacity; or

10 (3) result in a reduction in a refinery's pollu-
11 tion output.

12 **SEC. 103. STATEMENT OF ENERGY EFFECTS.**

13 (a) PREPARATION.—

14 (1) REQUIREMENT.—An agency shall prepare
15 and submit a Statement of Energy Effects to the
16 Administrator of the Office of Information and Reg-
17 ulatory Affairs, Office of Management and Budget,
18 for each proposed significant energy action.

19 (2) CONTENTS.—A Statement of Energy Ef-
20 fects shall consist of a detailed statement by the
21 agency responsible for the significant energy action
22 relating to—

23 (A) any adverse effects on energy supply,
24 distribution, or use (including a shortfall in
25 supply, price increases, and increased use of

1 foreign supplies) should the proposal be imple-
2 mented; and

3 (B) reasonable alternatives to the action
4 with adverse energy effects, and the expected
5 effects of such alternatives on energy supply,
6 distribution, and use.

7 (3) GUIDANCE AND CONSULTATION.—The Ad-
8 ministrator of the Office of Information and Regu-
9 latory Affairs shall provide guidance to the agencies
10 on the implementation of this section and shall con-
11 sult with other agencies as appropriate in the imple-
12 mentation of this section.

13 (b) PUBLICATION.—Agencies shall publish their
14 Statements of Energy Effects, or a summary thereof, in
15 each related Notice of Proposed Rulemaking and in any
16 resulting Final Rule.

17 (c) DEFINITIONS.—For purposes of this section—

18 (1) the term “agency” has the meaning given
19 that term in section 3502(1) of title 44, United
20 States Code, except that the term does not include
21 an independent regulatory agency, as defined in
22 paragraph (5) of that section; and

23 (2) the term “significant energy action” means
24 any action by an agency that is expected to lead to
25 promulgation of a final rule or regulation and that—

1 (A) is likely to have a significant adverse
2 effect on the supply, distribution, or use of en-
3 ergy; or

4 (B) is designated by the Administrator of
5 the Office of Information and Regulatory Af-
6 fairs as a significant energy action.

7 **TITLE II—REFINING CAPACITY**
8 **ON CLOSED MILITARY IN-**
9 **STALLATIONS**

10 **SEC. 201. DEFINITIONS.**

11 For purposes of this title—

12 (1) the term “base closure law” means the De-
13 fense Base Closure and Realignment Act of 1990
14 (part A of title XXIX of Public Law 101–510; 10
15 U.S.C. 2687 note) and title II of the Defense Au-
16 thorization Amendments and Base Closure and Re-
17 alignment Act (Public Law 100–526; 10 U.S.C.
18 2687 note);

19 (2) the term “closed military installation”
20 means a military installation closed or approved for
21 closure pursuant to a base closure law;

22 (3) the term “designated refinery” means a re-
23 finery designated under section 202(a);

24 (4) the term “Federal refinery authorization”—

1 (A) means any authorization required
2 under Federal law, whether administered by a
3 Federal or State administrative agency or offi-
4 cial, with respect to siting, construction, expan-
5 sion, or operation of a refinery; and

6 (B) includes any permits, special use au-
7 thorizations, certifications, opinions, or other
8 approvals required under Federal law with re-
9 spect to siting, construction, expansion, or oper-
10 ation of a refinery;

11 (5) the term “refinery” means—

12 (A) a facility designed and operated to re-
13 ceive, load, unload, store, transport, process,
14 and refine crude oil by any chemical or physical
15 process, including distillation, fluid catalytic
16 cracking, hydrocracking, coking, alkylation,
17 etherification, polymerization, catalytic reform-
18 ing, isomerization, hydrotreating, blending, and
19 any combination thereof, in order to produce
20 gasoline or other fuel; or

21 (B) a facility designed and operated to re-
22 ceive, load, unload, store, transport, process,
23 and refine coal by any chemical or physical
24 process, including liquefaction, in order to

1 produce gasoline, diesel, or other liquid fuel as
2 its primary output;

3 (6) the term “Secretary” means the Secretary
4 of Energy; and

5 (7) the term “State” means a State, the Dis-
6 trict of Columbia, the Commonwealth of Puerto
7 Rico, and any other territory or possession of the
8 United States.

9 **SEC. 202. STATE PARTICIPATION AND PRESIDENTIAL DES-**
10 **IGNATION.**

11 (a) DESIGNATION REQUIREMENT.—Not later than
12 90 days after the date of enactment of this Act, the Presi-
13 dent shall designate no less than 3 closed military installa-
14 tions, or portions thereof, subject to subsection (c)(2), that
15 are appropriate for the purposes of siting a refinery.

16 (b) ANALYSIS OF REFINERY SITES.—In considering
17 any site for possible designation under subsection (a), the
18 President shall conduct an analysis of—

19 (1) the availability of crude oil supplies to the
20 site, including supplies from domestic production of
21 shale oil and tar sands and other strategic uncon-
22 ventional fuels;

23 (2) the distribution of the Nation’s refined pe-
24 troleum product demand;

1 (3) whether such site is in close proximity to
2 substantial pipeline infrastructure, including both
3 crude oil and refined petroleum product pipelines,
4 and potential infrastructure feasibility;

5 (4) the need to diversify the geographical loca-
6 tion of the domestic refining capacity;

7 (5) the effect that increased refined petroleum
8 products from a refinery on that site may have on
9 the price and supply of gasoline to consumers;

10 (6) the impact of locating a refinery on the site
11 on the readiness and operations of the Armed
12 Forces; and

13 (7) such other factors as the President con-
14 siders appropriate.

15 (c) SALE OR DISPOSAL.—

16 (1) DESIGNATION.—Except as provided in
17 paragraph (2), until the expiration of 2 years after
18 the date of enactment of this Act, the Federal Gov-
19 ernment shall not sell or otherwise dispose of the
20 military installations designated pursuant to sub-
21 section (a).

22 (2) GOVERNOR’S OBJECTION.—No site may be
23 used for a refinery under this title if, not later than
24 60 days after designation of the site under sub-
25 section (a), the Governor of the State in which the

1 site is located transmits to the President an objec-
2 tion to the designation, unless, not later than 60
3 days after the President receives such objection, the
4 Congress has by law overridden the objection.

5 (d) REDEVELOPMENT AUTHORITY.—With respect to
6 a closed military installation, or portion thereof, des-
7 ignated by the President as a potentially suitable refinery
8 site pursuant to subsection (a)—

9 (1) the redevelopment authority for the installa-
10 tion, in preparing or revising the redevelopment plan
11 for the installation, shall consider the feasibility and
12 practicability of siting a refinery on the installation;
13 and

14 (2) the Secretary of Defense, in managing and
15 disposing of real property at the installation pursu-
16 ant to the base closure law applicable to the installa-
17 tion, shall give substantial deference to the rec-
18 ommendations of the redevelopment authority, as
19 contained in the redevelopment plan for the installa-
20 tion, regarding the siting of a refinery on the instal-
21 lation.

22 **SEC. 203. PROCESS COORDINATION AND RULES OF PROCE-**
23 **DURE.**

24 (a) DESIGNATION AS LEAD AGENCY.—

1 (1) IN GENERAL.—The Department of Energy
2 shall act as the lead agency for the purposes of co-
3 ordinating all applicable Federal refinery authoriza-
4 tions and related environmental reviews with respect
5 to a designated refinery.

6 (2) OTHER AGENCIES.—Each Federal and
7 State agency or official required to provide a Fed-
8 eral refinery authorization shall cooperate with the
9 Secretary and comply with the deadlines established
10 by the Secretary.

11 (b) SCHEDULE.—

12 (1) SECRETARY'S AUTHORITY TO SET SCHED-
13 ULE.—The Secretary shall establish a schedule for
14 all Federal refinery authorizations with respect to a
15 designated refinery. In establishing the schedule, the
16 Secretary shall—

17 (A) ensure expeditious completion of all
18 such proceedings; and

19 (B) accommodate the applicable schedules
20 established by Federal law for such proceedings.

21 (2) FAILURE TO MEET SCHEDULE.—If a Fed-
22 eral or State administrative agency or official does
23 not complete a proceeding for an approval that is re-
24 quired for a Federal refinery authorization in ac-
25 cordance with the schedule established by the Sec-

1 retary under this subsection, the applicant may pur-
2 sue remedies under subsection (d).

3 (c) CONSOLIDATED RECORD.—The Secretary shall,
4 with the cooperation of Federal and State administrative
5 agencies and officials, maintain a complete consolidated
6 record of all decisions made or actions taken by the Sec-
7 retary or by a Federal administrative agency or officer (or
8 State administrative agency or officer acting under dele-
9 gated Federal authority) with respect to any Federal re-
10 finery authorization. Such record shall be the record for
11 judicial review under subsection (d) of decisions made or
12 actions taken by Federal and State administrative agen-
13 cies and officials, except that, if the Court determines that
14 the record does not contain sufficient information, the
15 Court may remand the proceeding to the Secretary for fur-
16 ther development of the consolidated record.

17 (d) JUDICIAL REVIEW.—

18 (1) IN GENERAL.—The United States Court of
19 Appeals for the District of Columbia shall have
20 original and exclusive jurisdiction over any civil ac-
21 tion for the review of—

22 (A) an order or action, related to a Federal
23 refinery authorization, by a Federal or State
24 administrative agency or official; and

1 (B) an alleged failure to act by a Federal
2 or State administrative agency or official acting
3 pursuant to a Federal refinery authorization.

4 The failure of an agency or official to act on a Fed-
5 eral refinery authorization in accordance with the
6 Secretary's schedule established pursuant to sub-
7 section (b) shall be considered inconsistent with Fed-
8 eral law for the purposes of paragraph (2) of this
9 subsection.

10 (2) COURT ACTION.—If the Court finds that an
11 order or action described in paragraph (1)(A) is in-
12 consistent with the Federal law governing such Fed-
13 eral refinery authorization, or that a failure to act
14 as described in paragraph (1)(B) has occurred, and
15 the order, action, or failure to act would prevent the
16 siting, construction, expansion, or operation of the
17 designated refinery, the Court shall remand the pro-
18 ceeding to the agency or official to take appropriate
19 action consistent with the order of the Court. If the
20 Court remands the order, action, or failure to act to
21 the Federal or State administrative agency or offi-
22 cial, the Court shall set a reasonable schedule and
23 deadline for the agency or official to act on remand.

24 (3) SECRETARY'S ACTION.—For any civil action
25 brought under this subsection, the Secretary shall

1 promptly file with the Court the consolidated record
2 compiled by the Secretary pursuant to subsection
3 (c).

4 (4) EXPEDITED REVIEW.—The Court shall set
5 any civil action brought under this subsection for ex-
6 pedited consideration.

7 (5) ATTORNEY’S FEES.—In any action chal-
8 lenging a Federal refinery authorization that has
9 been granted, reasonable attorney’s fees and other
10 expenses of litigation shall be awarded to the pre-
11 vailing party. This paragraph shall not apply to any
12 action seeking remedies for denial of a Federal refin-
13 ery authorization or failure to act on an application
14 for a Federal refinery authorization.

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